

3RD INTERNATIONAL ROMAN LAW MOOT COURT COMPETITION

25-29 March 2010

Imaret of Kavala & Forum Romanum Coloniae Augustae Iuliae Philippensis

In memoriam of Professors G. Maridakis & P. Zepos

FACTS OF THE CASE

1. The facts of the case take place in Constantinople in 557 AD during the reign of the Emperor Justinian I (527-565 AD).
2. Origenes was born in Alexandria. Soon after the death of his parents he moved to Constantinople at the age of 14 to seek work. He worked hard and several years later he had built a highly successful business empire in both real estate and the supply of slaves. After two unsuccessful marriages, he married a much younger girl from Macedonia called Sofia. He died in 546 AD leaving behind his widow, Sofia, and his two children from his first and second marriage respectively, Anastasius and Basilius. Devastated by Origenes's death, Sofia abandoned this vain world and interned herself in the Holy Monastery of Saint John the Forerunner. According to Origenes's last wishes, Anastasius inherited the slave trade business (with about 500 slaves in stock) and Basilius the real estate.
3. A few days before his death, Origenes had invited his two sons to his room. Knowing that they disliked each other, he had made them take an oath on the Holy Gospel that they would maintain the business together.
4. During his adolescence Basilius had studied under the philosopher Theodulus, who was a distant pupil of Gregory of Nazianzus, the former archbishop of Constantinople. Arguing for a somewhat radical version of Gregory's teaching, Theodulus became famous for his passionate rejection of slavery. Now that his relationship with Anastasius was deteriorating, Basilius would often seize the opportunity of the various business meetings he would have with Anastasius to indoctrinate him about the abolition of slavery. Eventually, Anastasius and Basilius fell out completely over the moral conse-

quences of dealing in the slave trade. Basilius was, and remains vehemently opposed to any trade or holding of slaves. Anastasius moved out of the family house and built himself a grand villa, where he was waited on by slaves. He taunted Basilius with the knowledge that he often abused his slaves. Basilius responded by buying land next to Anastasius's villa and allowing his attendants – emancipated slaves – to enjoy themselves in view of Anastasius.

5. Understandably, both Anastasius and Basilius were committed to each other's destruction. In 557 AD, Basilius conceived a plan to emancipate all of Anastasius's slaves, thus both ruining Anastasius and achieving his abolitionist aims. In order to be able to afford this he needed to buy the slaves at a low price. Basilius thought that he would have a chance to influence the price over a period of time and thus secure a good bargain. To his mind, the best way of accomplishing this was to conclude a contract for the market price as determined after a period of one year.

6. When Basilius consulted Anastasius about the proposed transaction, Anastasius grasped that the deal gave him the opportunity to bankrupt Basilius, by driving the price up. Selling the slaves at a high price would secure a double aim for him: Basilius would not only be insolvent, but would also be forced into the slave trade, contrary to his publicly stated convictions. Anastasius became even more excited when he realised he would be able to kill three birds with one stone. Apart from driving Basilius into ruin, his gravest concern had been the fluctuation of slave prices over the last years. If he could convince Basilius to 'extend' the deal, he would be able to hedge himself against future price fluctuations. He said to Basilius: 'Well, well, dear brother, I know you are betting on a low price for that. Otherwise you couldn't afford the deal. Know what? We'll see how it goes. Every three months, you will pay me the market price for 500 slaves, and I will give you a good 10 solidi for each slave.' Anastasius knew that, with such a deal, he would be able to offset his losses if slave prices increased (and thus the running costs of the slave trade also went up). Basilius would have to pay him the difference in that case.

7. Anastasius was aware that he faced a certain risk of prices decreasing and thereby losing his stock for peanuts. Yet, he had heard rumours which made him expect a considerable increase in slave prices. There was word that the dockworkers at the port of Constantinople were planning to strike over early retirement. Anastasius was uncertain

as to whether there was any truth in this rumour but, after consulting his friend Ioannes, the barkeeper of the *taberna* “The Gold Anchor”, he believed the strike was likely to come about. Anastasius was delighted by the prospect as he knew full well that his brother would not have heard a thing about the strike, (Basilius being engaged in philosophical readings rather than being attentive to the really important things of life such as port gossip). Accordingly, Anastasius decided to maintain silence about it towards Basilius.

8. A few days later, Anastasius had succeeded in making the envisaged deal palatable to his brother. He was not quite sure whether Basilius, whose sharp wits were not so much directed at economics, had fully appreciated the economic dimension of this transaction, but at least Basilius seemed to feel confident enough about the matter. On the 24th of March, Anastasius and Basilius appeared before a public notary and concluded the following agreement in writing: “I, Basilius, son of Origenes, consent to enter into an agreement with my brother Anastasius with regard to 500 of his slaves. I, Basilius, agree to pay the spot market price for each of these slaves every three months from now. I, Anastasius, agree to pay the sum of 10 solidi for each of these 500 slaves to Basilius every three months. This contract will last for one year at which point the accounts will close and our debts and demands against each other will be set off. Instead of paying the final instalment, Anastasius will transfer the slaves to Basilius for the balance, which will be payable without delay. To give faith to the aforementioned agreement, we, Anastasius and Basilius, have placed our right hands on the Holy Gospel and swore to abide by this agreement procured by our mutual consent or suffer the greatest evils and burn for eternity in hell if we were to breach any of the aforementioned terms. Done in Constantinople, on the day before the feast of the Annunciation of the Holy Mother of God in the year of Our Lord 557 and the year 31 of the reign of our August Emperor Justinian.”

9. Basilius soon commenced his endeavours to influence the slave market by affecting demand. He decided to enlist the help of a University professor in a ‘public awareness campaign’. By highlighting the ‘dirtier’ sides of un-liberated life, Basilius aimed to morally blackmail consumers into eschewing the slave market and thus decrease the price of slaves. With this in mind, Basilius sponsored a new chair at the *Studium liberale Urbis Constantinopolitanae* (the University of Constantinople). Indeed he succeeded in

having Theodulus appointed Professor of Law and Legal Philosophy. Other than his views on slavery, Theodulus had also been well known for his fervent support of natural law theory. His list of publications included several seminal treatises such as: 'Personal servitudes: would you?', published in the Constantinople Law Journal and 'The problem of the social cost of slavery', published in the Beirut Law Review.

10. In response to this challenge, Anastasius also decided to sponsor a new chair at the University. In contrast, he aimed to drive up demand by expounding the virtues, or utilities of a good, young, female slave. This, he hoped, would increase the price of slaves. His personal friend and lawyer Hypatius was appointed as Imperial Professor of Civil Law. Hypatius's support for slavery had been express throughout his work. His list of publications included some groundbreaking articles such as: 'Another man's meat', published in the Slavery Market Law Review and his book 'Better in Bondage', published by the Constantinople University Scriptorium. He is currently working on another masterpiece: 'A very good reason for buying a slave woman?'.

11. Both Hypatius and Theodulus engaged in a fervent campaign to support and propagate their views on slavery. Their lectures became a major attraction not only for law students but also for lawyers, judges, priests and other intellectuals. In March 557 AD the University decided to host a public debate between the two professors. Soon after the beginning of the debate tensions reached a boiling point over the interpretation of a fragment of the Digest, D. 5.3.27 pr.

12. Hypatius claimed that the correct understanding was that:

Although the offspring of a slave woman and the offspring of those offspring are not considered to be fruits, nevertheless, because, not without reason, slave women are acquired for the purpose of bearing offspring, the offspring increase the estate; therefore since all these things become part of the inheritance, there is no doubt that the possessor must restore them, if he possesses them or fraudulently took steps to relinquish possession of them after the *hereditatis petitio* proceedings were raised.

Thereby he argued forcefully against the commonly accepted interpretation, according to which Ulpian is understood to say the following:

The children of slave-girls and the children of their children, though not thought

of as fruits because slave-girls are not acquired solely as breeding stock, are still additions to an inheritance. Since all these become part of the inheritance, there is no doubt that the possessor, if he is either in possession or, after a claim for the inheritance, has with fraudulent intent acted so as to rid himself of possession, is obliged to make them over.

Hypatius went on to comment that Ulpian clearly accepted it as a significant motive for the purchase of slave women to have them giving birth to children. This view of Ulpian's would also be apparent by the entire of his writing on the Edict of the *Curule Aediles*. It was only natural that a purchaser could reject a slave woman if she turned out to be infertile, this being the 'most horrible of all defects a slave woman could possibly have'.

13. At that stage, Theodulus stood up and said loudly so that everybody could hear him: 'Your views are no surprise to me, Hypatius. Though I am not sure to what extent they represent the view of a scholar or the need to find an excuse for one's own habits!' Hypatius immediately jumped up to retort: 'We all know why Theodulus would never return a slave woman. It is not only his beliefs, but the fact that the "most horrible of all defects" lies with him and not his beloved slaves.' Theodulus was visibly offended by this but, although seething inside, managed to keep his temper, whilst the audience could only watch with disbelief at the open break-out of a fiery battle of argument.

Theodulus: 'Ha! Insulting is the last resort of him that knows nothing to say to the point.'

Hypatius: 'Oh, what a lame response. Just as lame as is every single one of your papers. Don't you get it? Slaves are not people, they are things. It has always been like that and it will always be.'

Theodulus: "It has always been like that." Your argument is so poor, it's incredible. I can only repeat myself: Nature itself demands that slavery must be overcome. By nature, there is no such thing as slaves or masters. Slaves are human beings and they have to be treated as human beings! This is not just a fancy classification, no! It's a self-evident truth! You are a man of the past, Hypatius. Slavery is an idea of the past, and your justification is one of the past. Outworn, out-dated – scrap it!

Hypatius: 'You are such a do-gooder, Theodulus. I'll show you what nature is about!'

14. Having said this, Hypatius proceeded to demonstrate his mastership by slapping his own attendant slave Paulus in the face. Horrified by this sight, Theodulus had the presence of mind to step forward, get hold of Hypatius's own speaking notes and to hit Hypatius with them on his head in order to prevent him from castigating Paulus any further. Having thus forced Hypatius to desist from Paulus, Theodulus took a deep breath and said: 'Hypatius, you are such a disgrace for the entire academic world. I haven't the faintest idea how you got that chair at the University, anyway. And if I were your mother, I would be devastated by your behaviour.' With these words, Theodulus left the hall, and was followed by his faithful supporters.

15. At the 1st of May, the dockworkers finally decided to begin the strike. As expected, slaves had to be hired as substitutes while the strike continued, and the price of slaves rocketed due to a scarcity of supply. Only after some good four months did the dockworkers return to work, having settled their claims with the local officials. Soon after the prices rallied to a normal market price, some good news for Basilius arrived in the form of slave flu, an epidemic fever which incapacitated slaves. The epidemic caused slave prices to fall dramatically. Unfortunately for Basilius the strike proved to have a larger financial impact on the price of slaves than the slave flu.

Over the year, the three-month fluctuations in the slave market were as follows:

24 June 557 – 19 solidi (dockworkers strike)

24 September 557- 13 solidi (strike effect abating)

24 December 557- 11 solidi (normal market fluctuations)

24 March 558 - 5 solidi (slave flu)

16. As the year comes to an end, Basilius owes 24,000 solidi to his brother, Anastasius owes 15,000 and the 500 slaves. Basilius does not have 9,000 solidi spare and so faces the prospect of bankruptcy. When Anastasius approaches his brother to demand the balance of 9,000 solidi in return for the slaves, Basilius refuses to pay. He argues that there was never a valid contract because the agreement was essentially a bet. Further, he alleges Anastasius has cheated him by concealing his 'insider knowledge' of the strike. This, as well as Anastasius's 'public awareness campaign' would preclude him from exercising any rights from the agreement. Basilius admits that the latter would

hold true for himself, as well, but he says he would not insist on performance, anyway. Since Basilius is not willing to give in to his brother's claim, Anastasius resorts to raise an *actio venditi* against Basilius.

17. Hypatius, on the other hand, by way of an *actio iniuriarum*, seeks reparation for the, as he contends, 'countless offences' inflicted on him by Theodulus. Apart from the verbal and physical injury suffered during the debate, he lists amongst the offences the annoyance caused by the following incident: After the debate, Theodulus covertly approached Hypatius's slave Paulus in order to, as Theodulus describes it, 'convince him of the right opinion'. He decided to teach Paulus a song that was becoming fashionable amongst oppressed slaves in those times. The opening line of the song ran '*Surgite, vos damnati terrae*', and the song culminated in the phrase '*Exercitus servorum, age, surge!*'. Indeed, Theodulus contemplated the possibility that Paulus would sing the song in front of Hypatius which would be almost certain to enrage the latter. Paulus immediately became a fan of the song. Unfortunately for all parties involved, Paulus had not been blessed with either intelligence or social grace. In consequence, he sung the song incessantly to Hypatius who was equally tenacious in his beating. In the end, Hypatius was so annoyed with Paulus that he sold him off to Anastasius.

18. Anastasius and Hypatius have mandated the same lawyers to act on their behalf in the following actions:

- A. **Anastasius raises an *actio venditi* against Basilius for 9,000 solidi in return of the delivery of 500 slaves.**
- B. **Hypatius raises an *actio iniuriarum* against Theodulus for the sum of 100 solidi, due to the offences specified in the *libellus conventionis*.**